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**THIS DISPOSITION
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Paper No. 21
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Oris LTDA**

Serial No. 74/**718,903**

John A. Clifford of **Merchant & Gould P.C.** for **Oris LTDA**.

Mary Rossman, Trademark Examining Attorney, Law Office 109
(**Ronald Sussman**, Managing Attorney).

Before **Hohein**, **Hairston** and **Chapman**, Administrative Trademark Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Oris LTDA, as assignee of United Rope (Holland) Distributors, Inc., is the owner of an application to register the term "EXTRA STRONG" as a trademark for "baler twine".¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, the term "EXTRA STRONG" is at least merely descriptive of, if not generic for, such goods. In particular, while applicant, in its initial response to the refusal on the ground of mere descriptiveness,

¹ Ser. No. 74/718,903, filed on August 22, 1995, which alleges a date of first use anywhere of December 1986 and a date of first use in commerce of May 1987. The word "STRONG" is disclaimed.

amended the application to set forth a claim that the term "EXTRA STRONG" has acquired distinctiveness for its baler twine and is therefore registrable pursuant to the provisions of Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), such claim has been finally refused as insufficient on the basis that the term is either generic for applicant's goods or, alternatively, it is so highly descriptive thereof that the evidence offered by applicant does not suffice to demonstrate acquired distinctiveness.² Thus, as applicant notes in its initial brief, the issues on this appeal are whether the term "EXTRA STRONG" is generic for applicant's goods and, if not, whether applicant's showing is sufficient to establish that such term, although merely descriptive of baler twine, has acquired distinctiveness.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register on the ground that while, on this record, clear evidence of genericness has not been shown by the Examining Attorney, the

² It is pointed out that while, as set forth in *In re Capital Formation Counselors, Inc.*, 219 USPQ 916, 917 (TTAB 1983) at n. 2, the insufficiency of a showing pursuant to Section 2(f) is not a statutory basis for a refusal of registration on the Principal Register, the failure to make a sufficient showing of acquired distinctiveness precludes registration of a term which is otherwise barred by the "merely descriptive" prohibition of Section 2(e)(1). Furthermore, in the case of a merely descriptive term which is generic, no showing of acquired distinctiveness would suffice for purposes of registration on the Principal Register. See, e.g., *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 728 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986) and authority cited therein ["A generic term ... can never be registered as a trademark because such term is 'merely descriptive' within the meaning of Section 2(e)(1) and is incapable of acquiring de jure distinctiveness under Section 2(f). The generic name of a thing is in fact the ultimate in descriptiveness"]. Thus, applicant's claim of acquired distinctiveness would not suffice to overcome a possible finding that the term "EXTRA STRONG" is generic for applicant's goods so as to permit registration.

term "EXTRA STRONG" is merely descriptive of applicant's baler twine and applicant has failed to establish that such term has acquired distinctiveness.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or aspect about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is to be used in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

It is also well established that, in the case of a generic term, the burden is on the Patent and Trademark Office ("PTO") to show the genericness of such term by "clear evidence" thereof. See, e.g., In re Merrill Lynch, Pierce, Fenner & Smith, Inc., supra at 1143. See also In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987). As to the standard for evaluating genericness, the Board in In re Leatherman Tool Group Inc., 32 USPQ2d 1443, 1449 (TTAB 1994), has stated for example that:

The test for determining whether a designation is generic, as applied to the goods [or services] set forth in an application or registration, turns upon how the term is perceived by the relevant public. See Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1552-53 (Fed. Cir. 1991) and cases cited therein at 1553. Such perception is the primary consideration in a determination of genericness. See Loglan Institute Inc. v. Logical Language Group Inc., 962 F.2d 1038, 22 USPQ2d 1531, 1532 (Fed. Cir. 1992). As Section 14(3) of the Trademark Act, 15 U.S.C. §1064(3), makes clear, "[a] ... mark shall not be deemed to be the generic name of goods [or services] solely because such mark is also used as a name to identify a unique product [or service]"; instead, "[t]he primary significance of the ... mark to the relevant public rather than purchaser motivation shall be the test for determining whether the ... mark [is or] has become the generic name of the goods [or service] on or in connection with which it has been used." Consequently, if the designation sought to be registered is understood by the relevant public primarily to refer to the class or genus of goods [or services] at issue, the term is generic. See H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc., [728 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)] Evidence of the relevant public's understanding of a term may be obtained from any competent source, including newspapers,

magazines, dictionaries, catalogs and other publications. See *In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961, 963 (Fed. Cir. 1985).

Furthermore, as our principal reviewing court has reaffirmed in *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999):

[T]he correct legal test for genericness, as set forth in *Marvin Ginn*, requires evidence of "the genus of goods or services at issue" and the understanding by the general public that the mark refers primarily to "that genus of goods or services." In this, as in all cases, therefore, the PTO must be able to satisfy both elements of the test as set forth in the controlling precedent of *Marvin Ginn*.

In particular, the court noted in this regard that "[a]ptness is insufficient to prove genericness" and also cautioned that it is insufficient to "simply cite definitions and generic uses of the constituent terms of a mark, or ... a phrase within the mark, in lieu of conducting an inquiry into the meaning of the disputed [terms or] phrase as a whole [in order] to hold a mark, or a phrase within in the mark, generic." *Id.*

Turning first to the issue of genericness, applicant acknowledges in its initial brief that "[t]he Examining Attorney has found a significant amount of information from sources such as the Thomas Register, sample [third-party] labels from the market place, and Lexis/Nexis Database reports." However, even when such evidence is combined with additional evidence, including dictionary definitions of both the terms identifying applicant's goods and the terms which comprise its mark, applicant further asserts that:

Applicant respectfully disagrees with the conclusions reached [by the Examining Attorney] and strongly urges that the evidence does not support a finding that the mark is generic. Applicant freely concedes that strength is a property of baler twine and other similar substances. In fact, the disclaimer of the word STRONG, apart from the mark ..., fully handles this issue. The evidence submitted by the Examining Attorney, when fairly viewed, buttresses the conclusion that STRONG is an inherent property of baler twine. This fact does not prevent [r]egistration of the entire mark EXTRA STRONG[,] including a disclaimer of the word strong.

In particular, applicant accurately notes that none of the third-party registrations in which the term "extra strong" appears in the identification of goods "is for baler twine." Other evidence, "such as the samples of string, twine, and rope whose labels are part of the record" and which claim that the particular product "has great strength and is durable" or that it has the "extra strength of a synthetic," is also insufficient, according to applicant, because the use of "the words extra strength to describe the product" is not the same as using the term "extra strong" to name the product category. Applicant consequently argues that since "[n]o evidence exists to establish that EXTRA STRONG is a genus of product, or would be understood as such, ... the mark is not generic."

The Examining Attorney, on the other hand, asserts that a generic term "is an apt or common descriptor of a class or genus of goods" and that "[t]he class of product at issue here is baler twine." According to the Examining Attorney, "[t]he inquiry here is thus whether members of the relevant public use

or understand EXTRA STRONG ... to refer primarily to this category, class, kind or type of product." In this regard, the Examining Attorney contends among other things that (footnote omitted; **emphasis in original**):³

As recognized by the Applicant, the examining attorney has provided a significant amount of evidence that includes dictionary, thesaurus and encyclopedia excerpts, photocopies of twine and rope products together with their respective labels and packaging, Nexis story excerpts, Thomas Register excerpts, and X-search excerpts. The dictionary, thesaurus and encyclopedia excerpts show that twine is a strong cord; that rope, twine and cords are synonymous; and that strength is a property of baler twine and other similar substances. As shown by the highlighted, attached excerpt from The New Encyclopedia Britannica, not only is strength a property of such products, "The prime property ... is its tensile strength." There can thus be no question that the term EXTRA STRONG identifies the primary attribute of the [applicant's] goods.

The examining attorney's evidence [also] included photocopies of four different twine, cord and rope products with their labels and packaging. These reinforce the information that the principal property of the goods is their tensile strength and that this is one category for the products. For example, in connection with one product, wording that is identical to that sought to be registered, **EXTRA STRONG**, is used on the label for a ball of kite twine [which is] also suitable for

³ To the extent that certain excerpts accompanying the Examining Attorney's brief have not previously been made of record, and inasmuch as it is settled that judicial notice may properly be taken of standard reference works such as dictionaries, thesauri and encyclopedias, the request by the Examining Attorney in her brief that "judicial notice be given to excerpts" from such sources is approved. See, e.g., In re Hartop & Brandes, 311 F.2d 249, 135 USPQ 419, 423 (CCPA 1962) at n. 6; Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

household tying. On a second product, the photocopy of Ironees brand clothesline and label[,] indicates that the product is "thick heavy-duty, **extra** hi-tensile **strength**." The third product and label, for Wellington PolyTwine, indicates that the product has the handling and knotting characteristics of natural fibers with the **extra strength** of a synthetic. Fourth, the photocopy of Lehigh braided nylon rope and packaging includes charts about the properties of the goods ... and includes cautionary language that the strength of the goods is effected by knots, excessive heat and prolonged exposure to sunlight.

The Thomas Register excerpts are advertisements by competitors Crowe Rope Company and Waterbury Rope Mills for twine, cord, and rope products. These ads reinforce the encyclopedia information that the prime property for the product is tensile strength and that the goods are categorized by their varying strength. The ads ... include numerous statements about the essential characteristics of the products: "high strength," "three to four times as strong," "Super high strength," "A strong uniformly, round cord," "Superior strength," "One of the strongest ropes in general use," "High strength," and "Strong and lightweight."

....

To show that goods such as baler twine used in automatic bale throwing and ejecting equipment must necessarily be categorized and typed as extra strong, the examining attorney [additionally] attached copies of Nexis stories and X-search printouts The writer of The Tennessean story published August 25, 1997 stated that "the new breed of balers ... pulled behind a tractor" use "heavy twine to tie the bales." The writer of the Pittsburgh Business Times & Journal story published October 7, 1985 stated that "New high-volume balers require stronger baling ties ... to provide extra strength." The ... X-search printouts for U.S. Reg. Nos. 695551 BIGHORN baling and binding twine and wire, 1631169 RANCHGUARD baling wire and 1573442 RANCHGUARD baling twine, ... demonstrate that the same entities have

registered the same marks for use with both baler twine and baling wire and that these goods are closely related goods that customers used [sic] interchangeably. Thus the wording EXTRA STRONG immediately informs prospective purchasers of a category and prime property of applicant's goods.

Contrary to the Examining Attorney's conclusion that "the wording EXTRA STRONG has been shown to be common, laudatory [and] readily understood wording and to identify a type or category of product ... [which designates] an inherent characteristic of the identified goods," we agree with applicant that the evidence offered falls short of clearly establishing genericness. While, as applicant concedes, the strength of baler twine is a significant characteristic or feature of its goods, there simply is insufficient evidence to show that the term "EXTRA STRONG" names a category or grade of baler twine. In fact the sole actual use of such term as a category or grade denomination, as applicant points out, is in connection with kite twine, a product which, while it may be suitable for household or general purpose use, has not been shown to be a substitute or otherwise appropriate for heavy duty use as baler twine. It also appears from the record that, curiously, a search of the term "EXTRA STRONG" was not even conducted using the "NEXIS" database; instead, the Examining Attorney confined her searches to those employing the terminology "extra strength." Although it is plain that the latter is substantially similar in connotation to the former, such is not the same and there is nothing in the record which clearly demonstrates that the term "EXTRA STRONG" designates, as opposed to merely describing, a tensile strength

category or other significant kind or variety of baler twine. Thus, notwithstanding various dictionary definitions (discussed below) of such words as "extra," "strong," "bale" and "twine," the absence of any third-party use of the term "EXTRA STRONG" in connection with baler twine compels a conclusion on this record that such term is not generic in relation to applicant's goods. See, e.g., In re American Fertility Society, supra; and In re Ferrero S.p.A., 24 USPQ2d 1155, 1157 (TTAB 1992) ["if a term is generic for a type of a product that has been on the market for decades, evidence of its use by others in the marketplace should be available"].

Turning next to whether the term "EXTRA STRONG" has in fact acquired distinctiveness in connection with applicant's goods, we note as a preliminary consideration that, not only is there no real contention by applicant that such term is not merely descriptive of baler twine, but it is highly so as the following dictionary definitions make plain. Specifically, The American Heritage Dictionary of the English Language (3rd ed. 1992) defines "twine" in relevant part as a noun meaning "1. A strong string or cord made of two or more threads twisted together";⁴ lists "bale" (and "baler," although the latter is not defined) as a noun signifying "A large package of raw or finished

⁴ Likewise, the definitions of record from The Random House Dictionary of the English Language (2d ed. 1987) and Webster's II New Riverside University Dictionary (1988) respectively set forth such term as a noun meaning, among other things, "1. a strong thread or string composed of two or more strands twisted together" and "1. A strong string or cord formed of two or more threads twisted together."

material tightly bound with twine or wire and often wrapped";⁵ sets forth "extra" as an adjective connoting, inter alia, both "1. More than or beyond what is usual, normal, expected or necessary" and "2. Better than ordinary; superior: *extra fineness*" and as an adverb meaning "To an exceptional extent or degree; unusually: *extra dry*";⁶ and defines "strong" in pertinent part as an adjective signifying "7. a. Capable of withstanding force or wear; solid, tough, or firm: *a strong building; a strong fabric*. b. Having great binding strength: *a strong adhesive*."⁷ Clearly, as used in connection with baler twine, the term "EXTRA STRONG" immediately describes, without speculation or conjecture, a significant characteristic or feature of such product, namely, that it is exceptionally capable of withstanding force or is beyond the usual toughness for goods of its kind.

Plainly, there is nothing in the term "EXTRA STRONG" which, as applied to baler twine, is ambiguous, incongruous or susceptible to any other plausible meaning. Consequently, absolutely no imagination, cogitation or mental gymnastics whatsoever is necessary in order for customers of applicant's

⁵ To the same effect, the record contains a definition of "bale" from Webster's II New Riverside University Dictionary (1988) which defines such term as a noun denoting "A large bound, often wrapped package or raw or finished material."

⁶ Likewise, the definitions of record from Webster's II New Riverside University Dictionary (1988) set forth such term, inter alia, as an adjective meaning "1. Being beyond the expected, usual, or necessary. 2. Being better than ordinary : SUPERIOR <extra quality>" and as an adverb connoting "Exceptionally : unusually <extra firm>."

⁷ Similarly, the record includes a definition of "strong" from Webster's II New Riverside University Dictionary (1988) which lists

goods to know that the tensile strength of its product, which applicant "freely concedes" is an important property to users and purchasers of baler twine, is extra strong. Stated otherwise, the baler twine marketed by applicant under the designation "EXTRA STRONG" is not just "strong twine," of which there are numerous "NEXIS" references thereto in the record,⁸ but baler twine which is *extra strong*.

Furthermore, by amending the application to set forth a claim of acquired distinctiveness, applicant has in effect conceded that the term "EXTRA STRONG" is merely descriptive of (although not generic for) its goods. Specifically, such a claim is tantamount to an admission that the term "EXTRA STRONG" is not inherently distinctive and therefore is unregistrable on the Principal Register, in light of the prohibition in Section 2(e)(1) against merely descriptive marks, absent a showing of

such term as an adjective signifying, in relevant part, "6. Capable of enduring : SOLID <a strong foundation>."

⁸ The following examples, from the Examining Attorney's searches of "STRONG TWINE" and "STRONG W/20 TWINE," are representative:

"Fibrous bark of the mature plants can be twisted and braided into a strong twine." -- Washington Post, June 9, 1995;

"Attach a length of green nylon tie or very strong twine to the bottom of each length of chain." -- L.A. Times, September 10, 1994;

"He was old enough to remember how the Iban made strong twine from the heart of liana vines before stores made living simpler." -- San Francisco Examiner, August 14, 1994;

"Tie the moss firmly in place with strong twine or fabric." -- St. Petersburg Times, March 7, 1992; and

"The county urges that papers be bundled in strong twine only or stored in paper bags" -- Washington Post, July 14, 1988.

acquired distinctiveness pursuant to Section 2(f). See, e.g., Yamaha International Corp. v. Hoshino Gakki Co. Ltd., 840 F.2d 1572, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988) ["[w]here, as here, an applicant seeks a registration based on acquired distinctiveness under Section 2(f), the statute accepts a lack of inherent distinctiveness as an established fact"]; and TMEP §1212.02(b).

As our principal reviewing court has noted with respect to the possible registrability of merely descriptive terms which may nevertheless acquire distinctiveness or secondary meaning, "the greater the degree of descriptiveness the term has, the heavier the burden to prove it has obtained secondary meaning." Yamaha International Corp. v. Hoshino Gakki Co. Ltd., supra at 6 USPQ2d 1008. See also In re Bongrain International (American) Corp., 894 F.2d 1316, 13 USPQ2d 1727, 1728 (Fed. Cir. 1990) at n. 4. It is settled, moreover, that the applicant has the burden of proof with respect to establishing a prima facie case that a merely descriptive term has acquired distinctiveness.⁹ For instance, as stated in *Yamaha*, "the ultimate burden of persuasion

⁹ Under Trademark Rule 2.41(a), an applicant may demonstrate that such a term has acquired distinctiveness by submitting "affidavits, or declarations in accordance with §2.20, depositions, or other evidence showing duration, extent and nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with §2.20, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes the goods." In addition, or in the alternative, Trademark Rule 2.41(b) provides that "[i]n appropriate cases, ownership of one or more prior registrations on the Principal Register ... of the same mark may be accepted as prima facie evidence of distinctiveness" and that an acquired distinctiveness claim may also be based on a verified statement that the asserted mark has been in "substantially exclusive and continuous use in commerce ... by applicant for the five years before the date on which the claim of distinctiveness is made".

under Section 2(f) on the issue of acquired distinctiveness is on ... [the] applicant." Id.

Applicant, in support of its claim of acquired distinctiveness,¹⁰ has submitted the declaration of Mark Robideaux, who at the time was the corporate secretary of United Rope (Holland) Distributors, Inc., the immediate predecessor-in-interest to the current applicant, **Oris LTDA**. Mr. Robindeaux declares, among other things, that his declaration is made "in the belief that the trademark 'EXTRA STRONG' has become distinctive of the goods of United Rope (Holland) Distributors, Inc."; that since at least as early as December 1986, such firm "adopted the trademark 'EXTRA STRONG' for use on baler twine" and that, since that time, it "has continuously used the trademark 'EXTRA STRONG' on baler twine" and that "such use has been substantially exclusive to United Rope (Holland) Distributors, Inc."; that, "[s]ince the introduction of the product, sales have been substantial," as shown in the table below, which "sets forth the sales volume [in bales of twine] from 1986 through 1995":

<u>Year</u>	<u>Bales</u>
1986	4,950
1987	25,700
1988	11,400
1989	7,950
1990	24,900
1991	21,650

¹⁰ Specifically, by an amendment filed on July 18, 1996, applicant amended the application to "add the following 2(f) statement":

The mark has become distinctive of applicant's goods as a result of substantially exclusive and continuous use thereof by applicant in commerce for a period in excess of five years preceding the date of which this claim of distinctiveness is made.

1992	59,200
1993	19,400
1994	23,650
1995	26,650

that during such period, "[t]he total bale volume of sales have been in excess of 225,000 bales, with an average retail price in the range of \$15-\$20 per bale"; that "[t]otal sales for the period are in excess of \$3,381,000.00; and that United Rope (Holland) Distributors, Inc. "is the owner of Registration No. 1,143,429 for the 'HOLLAND EXTRA' mark used on baler twine and Registration No. 1,128,656 for the mark EXTRA for baler twine."¹¹

Applicant contends that the facts substantiated by Mr. Robindeaux's declaration are sufficient to show that the term "EXTRA STRONG" has acquired distinctiveness as used in connection with its baler twine. In particular, while acknowledging in its initial brief that it "bears the burden of establishing secondary meaning," applicant asserts that it "has met this burden by showing ... years of continuous use and substantial sales in excess of 3.3 million dollars." Combined with the "[f]urther evidence of secondary meaning ... presented by the claim of ownership of prior registrations for related marks,"¹² applicant

¹¹ A copy of the subsequent assignment of such registrations to **Oris LTDA** is of record. Thus, the present applicant is the owner thereof.

¹² Relying principally upon its "prior ownership of the trademark EXTRA," applicant stresses the argument that:

[T]his case is best viewed by considering what would occur if Applicant had attempted to register the mark EXTRA TWINE, with a disclaimer of TWINE. Such a mark would certainly be registrable on this record as the disclaimer of TWINE would remove any bar to registration. Here, where the mark is EXTRA STRONG and Applicant has entered a disclaimer of STRONG, the same result should hold. Namely, this

urges that the totality of the evidence "is sufficient to overcome the refusal to register."

We concur with the Examining Attorney, however, that the term "EXTRA STRONG" is "highly ... descriptive of applicant's goods" and that applicant's showing fails to demonstrate that such term has in fact acquired distinctiveness as a trademark for baler twine. Although applicant has established substantially exclusive and continuous use of the term "EXTRA STRONG" for a period of at least ten years, with sales amounting to over 225,000 bales with a value in excess of \$3.3 million, the sole manner of use demonstrated on this record is akin to a category or grade designation, as shown by the photographs (one of which is reproduced below) of packaging for its goods which applicant submitted as specimens of use.

Application should be advanced to Publication and Registration.

The typical purchasers and users of applicant's goods, viewing the term "EXTRA STRONG" in the above context, in which it is bound between the generic words "baler" and "twine," would simply regard such term as designating a type or kind of baler twine, i.e., extra strong baler twine (as opposed to, e.g., "strong twine"), rather than as a brand name of baler twine.

Moreover, as to applicant's sales figures, the Examining Attorney accurately observes that applicant has "failed ... to provide any context with which to evaluate" its conclusion that such figures represent substantial sales. While the amounts proven by applicant may arguably be substantial in the abstract, there is nothing in the record which indicates, by way of examples, the overall size of the marketplace for baler twine and the corresponding market share commanded by applicant's "EXTRA STRONG" goods during the time period for which sales figures were furnished. Furthermore, as the Examining Attorney also persuasively points out, applicant has "provided no evidence of any advertising activity at all, much less advertising activity directed to creating secondary meaning in such highly descriptive wording as EXTRA STRONG for baler twine."

Finally, with respect to applicant's contention that, along with the other evidence presented, its ownership of two prior registrations for baler twine marks which consist of or contain the word "EXTRA" suffices to establish acquired distinctiveness, we agree with the Examining Attorney that such

registrations are not for the same mark, namely, the term "EXTRA STRONG," as required by Trademark Rule 2.41(b). Contrary to applicant's assertion regarding the sufficiency of its disclaimer of the word "STRONG," applicant must establish that the term "EXTRA STRONG" as a whole functions as a mark, and therefore has acquired distinctiveness, for its goods in order to be entitled to the registration which it seeks. Here, as the Examining Attorney properly notes in her brief, the marks "EXTRA" and "HOLLAND EXTRA" both "mean different things" from, and hence are not the same mark as, the term "EXTRA STRONG" since the overall commercial impressions engendered thereby plainly are not legal equivalents.

Accordingly, it is adjudged that applicant has failed to establish a prima facie case of acquired distinctiveness and thus has not overcome the refusal on the ground of mere descriptiveness. See, e.g., In re Pennzoil Products Co., 20 USPQ2d 1753, 1760-61 (TTAB 1991); and In re Packaging Specialists, Inc., 221 USPQ 917, 920-21 (TTAB 1984). Such term is basically so highly descriptive of baler twine which is extra strong in its tensile strength that the term simply does not serve as an indication of source for such goods.¹³

Decision: The refusal under Section 2(e)(1) on the ground of genericness is reversed, but the refusal under Section

¹³ See, e.g., In re Boston Beer Co. L.P., 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999), holding that the phrase "THE BEST BEER IN AMERICA" for beer and ale to be "so highly ... descriptive of the qualities of [the applicant's] product that the slogan does not and could not function as a trademark to distinguish Boston Beer's goods and serve as an indication of origin."

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2(e)(1) on the ground of mere descriptiveness is affirmed, due to the insufficiency of applicant's claim of acquired distinctiveness.